

**GENERAL ASSEMBLY OF NORTH CAROLINA
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**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: Revenue Laws Technical & Admin. Changes.

(Public)

Sponsors: Unknown.

Referred to:

A BILL TO BE ENTITLED
AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE
CHANGES TO THE TAX LAWS.

The General Assembly of North Carolina enacts:

REFORM TAX APPEALS CHANGES

SECTION 1.(a) Section 10 of S.L. 2007-491 is repealed.

SECTION 1.(b) G.S. 105-122(a) reads as rewritten:

"(a) An annual franchise or privilege tax is imposed on a corporation doing business in this State. The tax is determined on the basis of the books and records of the corporation as of the close of its income year. A corporation subject to the tax must file a return under affirmation with the Secretary at the place and in the manner prescribed by the Secretary. The return must be signed by the president, vice-president, treasurer, or chief financial officer of the corporation. The return is due on or before the fifteenth day of the fourth month following the end of the corporation's income year. "

SECTION 1.(c) Subsections (a) and (c) of this section are effective January 1, 2008. Subsection (b) of this section is effective for taxable years beginning on or after January 1, 2009.

SECTION 2.(a) G.S. 105-130.16(a) reads as rewritten:

"(a) Return. – Every corporation doing business in this State must file with the Secretary an income tax return showing specifically the items of gross income and the deductions allowed by this Part and any other facts the Secretary requires to make any computation required by this Part. The return of a corporation must be signed by its president, vice-president, treasurer, or chief financial officer. The officer signing the return must furnish an affirmation verifying the return. The affirmation must be in the form required by the Secretary."

SECTION 2.(b) This section is effective for taxable years beginning on or after January 1, 2009.

SECTION 3.(a) G.S. 105-241.7(c) reads as rewritten:

"(c) Action on Request. – When a taxpayer files an amended return or a claim for refund, the Department must take one of the actions listed in this subsection within six months after the date the amended return or claim for refund is filed. If the Department does not take one of these actions within this time limit, the taxpayer has the option of considering the inaction a proposed denial of the requested refund or waiting until the Department takes one of the listed actions.

(1) Send the taxpayer a refund of the amount shown due on the amended return or claim for refund.

(2) Adjust the amount of the requested refund by increasing or decreasing the amount shown due on the amended return or claim for refund and send the taxpayer a refund of the adjusted amount. If the adjusted amount is less than the amount shown due on the amended return or claim for refund, the adjusted refund must include a reason for the adjustment. The adjusted refund is considered a notice of proposed denial for the amount of the requested refund that is not included in the adjusted refund.

(3) Deny the refund and send the taxpayer a notice of proposed denial.

(4) Send the taxpayer a letter requesting additional information concerning the requested refund. If a taxpayer does not respond to a request for information, the Department may deny the refund and send the taxpayer a notice of proposed denial. If a taxpayer provides the requested information, the Department must take one of the actions listed in this subsection within the later of the following:

a. The remainder of the six-month period.

b. 30 days after receiving the information.

c. A time period mutually agreed upon by the Department and the taxpayer."

SECTION 3.(b) G.S. 105-241.11(a) reads as rewritten:

"(a) Procedure. – A taxpayer who objects to a proposed denial of a refund or a proposed assessment of tax may request a Departmental review of the proposed action by filing a request for review. The request must be filed with the Department within 45 days after the following:

...

(3) The date that inaction by the Department on a request for refund was considered a proposed denial of the refund. This subdivision does not apply to a taxpayer who opts to wait to receive a notice of proposed denial of the refund rather than consider inaction a proposed denial of the refund."

SECTION 3.(c) This section is effective for taxable years beginning on or after January 1, 2008.

SECTION 4.(a) G.S. 105-241.14(c) reads as rewritten:

"(c) Time Limit. – The process set out in G.S. 105-241.13 for reviewing and attempting to resolve a proposed denial of a refund or a proposed assessment must conclude, and a final determination must be issued within nine months after the date the

1 taxpayer files a request for review. The Department and the taxpayer may extend this
2 time limit by mutual agreement. Failure to issue a notice of final determination within
3 the required time does not affect the validity of a proposed denial of a refund or
4 proposed assessment."

5 **SECTION 4.(b)** This section is effective for taxable years beginning on or
6 after January 1, 2008.

7 **SECTION 5.(a)** G.S. 105-241.22 reads as rewritten:

8 **"§ 105-241.22. Collection of tax.**

9 The Department may collect a tax in the following circumstances:

- 10 (1) When a taxpayer files a return showing an amount due with the return
11 and does not pay the amount shown due.

12 ..."

13 **SECTION 5.(b)** This section is effective for taxable years beginning on or
14 after January 1, 2008.

15 **MEDICAID TECHNICAL CHANGES**

16 **SECTION 6.(a)** G.S. 105-522(b), as enacted by Section 31.16.3(f) of S.L.
17 2007-323, reads as rewritten:

18 "(b) Requirement. – A county is required to hold the eligible municipalities in the
19 county harmless from the repeal of the local sales and use taxes formerly imposed under
20 this Article. The Secretary must add an eligible municipality's hold harmless amount to
21 the amount otherwise allocated to the municipality for distribution under this
22 Subchapter. To obtain the revenue for the hold harmless distribution, the Secretary must
23 reduce the amount otherwise allocated to a county for distribution under this Subchapter
24 or under Chapter 1096 of the 1967 Session Laws by the hold harmless amounts for the
25 municipalities in that county."

26 **SECTION 6.(b)** Section 31.16.3(d) of S.L. 2007-323 is repealed.

27 **SECTION 6.(c)** Section 31.16.3(e) of S.L. 2007-323 is repealed.

28 **SECTION 6.(d)** Subsection (a) of this section becomes effective October 1,
29 2008. The remainder of this section is effective when it becomes law.

30 **SECTION 7.(a)** G.S. 105-523, as enacted by Section 31.16.3(f) of S.L.
31 2007-323, reads as rewritten:

32 **"§ 105-523. County hold harmless for repealed local taxes.**

33 (a) Intent. – It is the intent of the General Assembly that each county benefit by
34 at least five hundred thousand dollars (\$500,000) annually from the exchange of a
35 portion of the local sales and use taxes for the State's agreement to assume the
36 responsibility for the non-administrative costs of Medicaid.

37 (b) Definitions. – The following definitions apply in this section:

- 38 (1) City hold harmless amount. – The hold harmless amount determined
39 under G.S. 105-522 for the eligible municipalities in a county.

- 40 (2) Hold harmless threshold. – The amount of a county's Medicaid service
41 costs and Medicare Part D clawback payments assumed by the State
42 under G.S. 108A-54 for the fiscal year, plus five hundred thousand
43 dollars (\$500,000).

- 44 (3) Repealed sales tax amount. – The sum of the following:

- a. Fifty percent (50%) of the amount of sales and use tax revenue distributed to a county under Article 40 of this Chapter, other than revenue from the sale of food that is subject to local tax but is exempt from State tax under G.S. 105-164.13B.
- b. Twenty-five percent (25%) of the amount of sales and use tax revenue distributed under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, other than revenue from the sale of food that is subject to local tax but is exempt from State tax under G.S. 105-164.13B.
- c. The amount determined under sub-subdivision a. of this subdivision subtracted from the amount determined under sub-subdivision b. of this subdivision. This calculation determines the effect of distributing a one-quarter percent (.25%) tax on the basis of point of origin instead of on a per capita basis. If the difference is negative, the result increases the hold harmless amount.

(c) Requirement. – If a county's repealed sales tax amount plus its city hold harmless amount for a fiscal year exceeds the county's hold harmless threshold for that fiscal year, the State is required to hold the county harmless for the difference by paying the amount of the difference to the county. The Secretary must withhold from sales and use tax collections under Article 5 of this Chapter the amount needed to make the county hold harmless payments required by this section.

(d) Method. – The Secretary must estimate a county's repealed sales tax amount, city hold harmless amount, and hold harmless threshold for a fiscal year to determine if the county is eligible for a hold harmless payment. The Secretary must send to an eligible county with the distribution made under G.S. 105-472 for March of that year an amount equal to ninety percent (90%) of its estimated hold harmless payment. At the end of each fiscal year, the Secretary must determine each county's hold harmless payment for that year. The Secretary must send by August 15 the remainder of the county's hold harmless payment for the fiscal year that ended on June 30. The Secretary of the Department of Human Resources must give the Secretary of Revenue the data needed to determine a county's hold harmless threshold."

SECTION 7.(b) Section 31.16.4(d) of S.L. 2007-323 is repealed.

SECTION 7.(c) Section 14.4(b) of S.L. 2007-345 is repealed.

SECTION 7.(d) G.S. 105-523, as enacted by Section 31.16.3(f) of S.L. 2007-323 and as amended by Section 6 of this act, reads as rewritten:

"§ 105-523. County hold harmless for repealed local taxes.

(a) Intent. – It is the intent of the General Assembly that each county benefit by at least five hundred thousand dollars (\$500,000) annually from the exchange of a portion of the local sales and use taxes for the State's agreement to assume the responsibility for the non-administrative costs of Medicaid.

(b) Definitions. – The following definitions apply in this section:

- (1) City hold harmless amount. – The hold harmless amount determined under G.S. 105-522 for the eligible municipalities in a county.

(2) Hold harmless threshold. – The amount of a county's Medicaid service costs and Medicare Part D clawback payments assumed by the State under G.S. 108A-54 for the fiscal year, less five hundred thousand dollars (\$500,000).

(3) Repealed sales tax amount. – The sum of the following distributed to a county for the month:

a. Fifty percent (50%) of the amount of sales and use tax revenue distributed under Article 40 of this Chapter, other than revenue from the sale of food that is subject to local tax but is exempt from State tax under G.S. 105-164.13B.

b. Twenty-five percent (25%) of the amount of sales and use tax revenue distributed under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, other than revenue from the sale of food that is subject to local tax but is exempt from State tax under G.S. 105-164.13B.

c. The amount determined by subtracting twenty-five percent (25%) of the amount of sales and use tax revenue distributed under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws from fifty percent (50%) of the amount distributed under Article 40 of this Chapter. This calculation determines the effect of distributing a one-quarter percent (.25%) tax on the basis of point of origin instead of on a per capita basis.

(c) Requirement. – If a county's repealed sales tax amount plus its city hold harmless amount for a fiscal year exceeds the county's hold harmless threshold for that fiscal year, the State is required to hold the county harmless for the difference by paying the amount of the difference to the county. The Secretary must withhold from sales and use tax collections under Article 5 of this Chapter the amount needed to make the county hold harmless payments required by this section.

(d) Method. – The Secretary must estimate a county's repealed sales tax amount, city hold harmless amount, and hold harmless threshold for a fiscal year to determine if the county is eligible for a hold harmless payment. The Secretary must send to an eligible county with the distribution made under G.S. 105-472 for March of that year an amount equal to ninety percent (90%) of its estimated hold harmless payment. At the end of each fiscal year, the Secretary must determine each county's hold harmless payment for that year. The Secretary must send by August 15 the remainder of the county's hold harmless payment for the fiscal year that ended on June 30. The Secretary of the Department of Human Resources must give the Secretary of Revenue the data needed to determine a county's hold harmless threshold."

SECTION 7.(e) Subsection (a) of this section becomes effective October 1, 2008, and applies to distributions for months beginning on or after that date. Subsection (d) of this section becomes effective October 1, 2009, and applies to distributions for months beginning on or after that date. The remainder of this section is effective when it becomes law.

OTHER CHANGES

1 **SECTION 8.(a)** G.S. 105-113.112 reads as rewritten:
2 **"§ 105-113.112. Confidentiality of information.**

3 Information obtained by the Department in the course of administering the tax
4 imposed by this Article, including information on whether the Department has issued a
5 revenue stamp to a person, is confidential tax information and is subject to the following
6 restrictions on disclosure:

- 7 (1) G.S. 105-259 prohibits the disclosure of the information, except in the
8 limited circumstances provided in that statute.
9 (2) The information may not be used as evidence, as defined in
10 G.S. 15A-971, in a criminal prosecution for an offense other than an
11 offense under this Article or under Article 9 of this Chapter. Under this
12 prohibition, no officer, employee, or agent of the Department may
13 testify about the information in a criminal prosecution for an offense
14 other than an offense under this Article or under Article 9 of this
15 Chapter. This subdivision implements the protections against double
16 jeopardy and self-incrimination set out in Amendment V of the United
17 States Constitution and the restrictions in it apply regardless of
18 whether information may be disclosed under G.S. 105-259. This
19 subdivision does not apply to information obtained from a source other
20 than an employee, officer, or agent of the Department. This
21 subdivision does not prohibit testimony by an officer, employee, or
22 agent of the Department concerning an offense committed against that
23 individual in the course of administering this Article. An officer,
24 employee, or agent of the Department who provides evidence or
25 testifies in violation of this subdivision is guilty of a Class 1
26 misdemeanor."

27 **SECTION 8.(b)** This section becomes effective December 1, 2008, and
28 applies to offenses committed on or after that date.

29 **SECTION 9.(a)** Part 2D of Article 10 of Chapter 143B of the General
30 Statutes is repealed.

31 **SECTION 9.(b)** G.S. 66-58(b)(21) is repealed.

32 **SECTION 9.(c)** G.S. 120-123(72) is repealed.

33 **SECTION 9.(d)** G.S. 126-5(c1)(20) is repealed.

34 **SECTION 9.(e)** G.S. 143B-437.45 reads as rewritten:

35 **"§ 143B-437.45. Definitions.**

36 The following definitions apply in this Part:

37 ...

38 (5) Regional partnership. – Any of the following:

- 39 a. The Western North Carolina Regional Economic Development
40 Commission created in G.S. 158-8.1.
41 b. The North Carolina's Northeast Commission created in
42 G.S. 158-8.2.
43 c. The Southeastern North Carolina Regional Economic
44 Development Commission created in G.S. 158-8.3.

- 1 d. The North Carolina's Eastern Region Development Commission
2 created in G.S. 158-35.
3 e. The Charlotte Regional Partnership, Inc.
4 f. The Research Triangle Regional Partnership.
5 g. The Piedmont Triad Partnership.
6 ..."

7 **SECTION 10.** G.S. 105-538 reads as rewritten:

8 **"§ 105-538. Administration of taxes.**

9 Except as provided in this Article, the adoption, levy, collection, administration, and
10 repeal of these additional taxes must be in accordance with Article 39 of this Chapter.
11 G.S. 105-468.1 is an administrative provision that applies to this Article. A tax levied
12 under this Article does not apply to the sales price of food that is exempt from tax
13 pursuant to G.S. 105-164.13B. The Secretary shall not divide the amount allocated to a
14 county between the county and the municipalities within the county. Notwithstanding
15 the provisions of G.S. 105-466(c), during the 2008 calendar year a tax levied under this
16 Article may become effective on the first day of any calendar quarter so long as the
17 county gives the Secretary at least 60 days' advance notice of the new tax levy."

18 **SECTION 11.(a)** G.S. 105-277.1(a2) reads as rewritten:

19 "(a2) Income Eligibility Limit. –For the tax year beginning July 1, 2008, the
20 income eligibility limit is twenty-five thousand dollars (\$25,000). For taxable years
21 beginning on or after July 1, 2009, the income eligibility limit is the amount for the
22 preceding year, adjusted by the same percentage of this amount as the percentage of any
23 cost-of-living adjustment made to the benefits under Titles II and XVI of the Social
24 Security Act for the preceding calendar year, rounded to the nearest one hundred dollars
25 (\$100.00). On or before July 1 of each year, the Department of Revenue must determine
26 the income eligibility amount to be in effect for the taxable year beginning the following
27 July 1 and must notify the assessor of each county of the amount to be in effect for that
28 taxable year."

29 **SECTION 11.(b)** This section becomes effective for taxable years beginning
30 on or after January 1, 2008.

31 **SECTION 12.** G.S. 158-12.1 reads as rewritten:

32 **"§ 158-12.1. Commission funds secured.**

33 The Western North Carolina Regional Economic Development Commission,
34 Research Triangle Regional Partnership, Southeastern North Carolina Regional
35 Economic Development Commission, Piedmont Triad Partnership, North Carolina's
36 Northeast Commission, North Carolina's Eastern Region Development Commission,
37 and Carolinas Partnership, Inc., may deposit money at interest in any bank, savings and
38 loan association, or trust company in this State in the form of savings accounts,
39 certificates of deposit, or such other forms of time deposits as may be approved for
40 county governments. Investment deposits and money deposited in an official depository
41 or deposited at interest shall be secured in the manner prescribed in G.S. 159-31(b).
42 When deposits are secured in accordance with this section, no public officer or
43 employee may be held liable for any losses sustained by an institution because of the
44 default or insolvency of the depository. This section applies to the regional economic

- 1 development commissions listed in this section only for as long as the commissions are
2 receiving State funds."
3 **EFFECTIVE DATE**
4 **SECTION 13.** Except as otherwise provided, this act is effective when it
5 becomes law.